

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

STIPULATION AND CONSENT ORDER

MARVIN SMITH, CRD#2461162

Docket No. SD-06-0028

Respondent.

The Utah Division of Securities ("Division"), by and through its Director of Licensing, George Robison, and Marvin Smith, CRD #2461162 ("Smith") hereby stipulate and agree as follows:

1. Smith was the subject of an investigation conducted by the Division into allegations that Smith violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.*
2. On May 8, 2006, the Division filed a Petition for Order Suspending License and Imposing a Fine against Smith.
3. In lieu of proceeding with the formal action, Smith and the Division have agreed to settle this matter by way of this Stipulation and Consent Order ("Order"). If approved, the

Order will fully resolve all claims the Division has against Smith pertaining to this matter.

4. Smith admits the jurisdiction of the Division over him and over the subject matter of this action.
5. Smith waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
6. Smith has read the Order, understands its contents and enters into this Order voluntarily. No promises or threats have been made by the Division, nor by any representative of the Division, to induce Smith to enter into this Order, other than as described in this Order.
7. Smith is represented by attorneys James R. Kruse and Paula W. Faerber and is satisfied with the legal representation he has received.

I. FINDINGS OF FACT

The Division makes the following findings:

8. Smith is a broker-dealer agent licensed in Utah who has been associated with Walnut Street Securities, Inc. ("WSS"), CRD#15840, since January 2000. Prior to that time, Smith was an agent of Princor Financial Services Corp., CRD#1137, and was licensed in Utah from February 1994 through December 1999.
9. Smith conducts business selling structured settlements¹ through the assumed name

¹A structured settlement is an agreement to pay a designated person a specified sum of money in periodic payments, usually for his or her lifetime, instead of in a single lump sum payment. Structured settlements typically are used to pay court-ordered or privately-agreed upon damages to injured claimants or their survivors, and are funded with an annuity.

Summit Settlement Services.²

10. In January 2006, Smith retained a web page designer to create a website for his business.

11. On March 31, 2006, a division examiner performed an Internet search using Smith's name and Summit Settlement Services, which directed her to a web page hosted by the web page designer.

12. The "Home" portion of Smith's web page stated:

My practice for the last 15 years has been limited to structured settlements. I specialize in the use of Variable Annuities as a component of the structured settlement to counteract the erosion of benefit values through inflation.

13. The "Services" portion of Smith's web page described various services he offered, and included the following:

Prior to Settlement ... Secure annuity proposals which provide the best cost to benefit ratio, taking into account the claimants [sic] health and current investment conditions.

During Settlement ... Obtain fixed or variable annuity contracts to accomplish the objectives of the structured settlement... Provide alternatives to fixed or variable annuity contracts if they are more appropriate for achieving the objectives of the settlement program.

14. The bottom of the "Services" page contained the following statement:

I am a licensed broker, and generally receive compensation for my services from commissions on the sale of annuities and other investment programs. These commissions are paid by the life insurance companies providing the annuities or by the investment program sponsors. As such, my services are usually provided at no cost.

15. The web page also provided contact information for Smith, including a toll-free telephone number, fax number, and the option to send an e-mail to Smith through the web page.

²This assumed name is not registered with the Utah Division of Corporations, as required by Utah Code Ann. § 42-2-5.

16. The web page did not make any reference to WSS and did not disclose that Smith was a WSS agent.
17. The WSS Compliance Manual (“compliance manual”), dated January 1, 2006, addresses in detail the requirements of NASD Conduct Rule 2210 – Communications with the Public – and how agents can comply with the rule. The compliance manual also contains a section specifically setting forth guidelines for agents with websites.
18. A Division investigation following the examiner’s review of the web page revealed the following:
 - a. From approximately January 26, 2006 to April 3, 2006, Smith’s web page appeared on the Internet and was accessible by members of the public.
 - b. The web page and its contents had not been reviewed or approved by Smith’s employing broker-dealer, WSS, or by NASD, as required by NASD Conduct Rule 2210, WSS policy, and the Act.
 - c. The web page contained misrepresentations of material fact or omitted to state material facts necessary in order to make content on the web page not misleading.

II. CONCLUSIONS OF LAW

19. Smith violated Section 61-1-1(2) of the Act by making misrepresentations and omissions of material facts on his web page about how he is paid. The web page represented that Smith is paid a commission by the life insurance companies or investment program sponsors providing annuities he sells, and further asserted that “[a]s such, my services are usually provided at no cost.” These statements are untrue and misleading because Smith receives compensation based upon the completion of the transaction. Smith did not

disclose that the insurance company recovers commissions from customers through deferred sales charges and higher product expenses deducted from the policy, which disclosure is necessary to make the representations about his compensation not misleading.

20. Smith engaged in dishonest and unethical business practices as set forth in Utah Administrative Code R164-6-1g(C)(28), applicable to agents through (D)(7), warranting sanctions under Section 61-1-6(2)(g) of the Act by:
- (a) failing to obtain approval from WSS for his web page, in violation of NASD Conduct Rule 2210(b)(1);
 - (b) not disclosing all material facts and having false and misleading statements on his web page, in violation of Conduct Rule 2210(d)(1); and
 - (c) not disclosing on his web page WSS's name or an explanation of his association with WSS, in violation of Conduct Rule 2210(d)(2).

III. REMEDIAL ACTION/SANCTIONS

21. Smith neither admits nor denies the Division's investigative findings and conclusions, but consents to the Division entering an Order suspending his license as a broker-dealer agent for a period of two (2) years, beginning from the date of entry of this Order.

IV. FINAL RESOLUTION

22. Smith acknowledges that this Order, upon approval by the Division Director and Securities Advisory Board shall be the final compromise and settlement of this matter. Smith further acknowledges that if the Division Director and Securities Advisory Board do not accept the terms of the Order, it shall be deemed null and void and without any

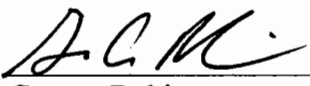
force or effect whatsoever.

23. Smith acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against Smith arising in whole or in part from Smith's actions, and that the Order does not affect any criminal cause of action that a prosecutor might bring.

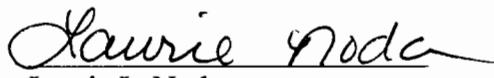
24. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way.

Utah Division of Securities

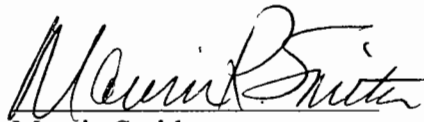
Date: 9/22/06

By: 
George Robison
Director of Licensing

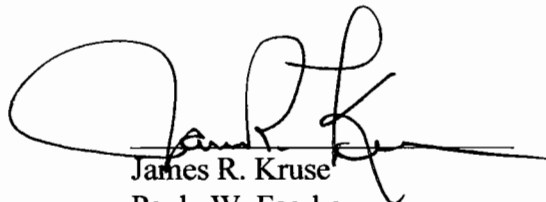
Approved:


Laurie L. Noda
Assistant Attorney General

Date: 9/14/06

By: 
Marvin Smith

Approved:

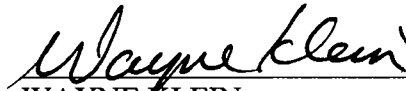

James R. Kruse
Paula W. Faerber
Attorneys for Marvin Smith

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Smith's license as a securities broker-dealer agent is hereby suspended for two (2) years beginning from the date of entry of this Order.

DATED this 16th day of October, 2006.


WAYNE KLEIN
Director, Utah Division of Securities



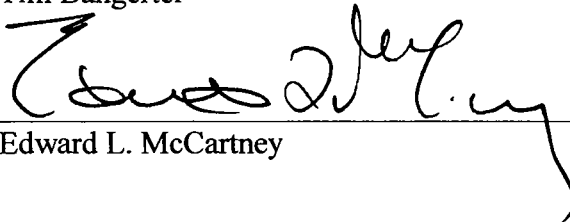
BY THE UTAH SECURITIES ADVISORY BOARD:

The foregoing Order is hereby accepted, confirmed and approved by the Utah Securities
Advisory Board.

DATED this 16~~th~~ day of OCTOBER, 2006.

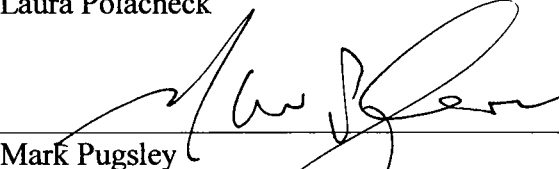


Tim Bangerter



Edward L. McCartney

Laura Polacheck



Mark Pugsley



Craig Skidmore

Certificate of Mailing

I certify that on the 17th day of OCTOBER, 2006, I mailed a true and correct copy of the Stipulation and Consent Order to:

James R. Kruse
Paula W. Faerber
Kruse Landa Maycock & Ricks
130 East South Temple, Suite 2100
P.O. Box 45561
Salt Lake City, UT 84145
ATTORNEYS FOR MARVIN SMITH

Paula W. Faerber
Executive Secretary